

## § 97.105

her attorney or agent of record or the assignee of record by notifying the Commissioner in writing. Upon receipt of such notice, the Commissioner shall publish a notice in the Official Journal that the variety has become open for use by the public, and if previously specified to be sold by variety name as "certified seed only," that such restriction no longer applies.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995; 70 FR 28785, May 19, 2005]

### § 97.105 Denial of an application.

(a) If the variety is found by the examiner to be not new, distinct, uniform, and stable, the application shall be denied.

(b) In denying an application, the examiner shall cite the reasons the application was denied. When a reason involves the citation of certain material which is complex, the particular part of the material relied on shall be designated as nearly as practicable. The pertinence of each reason, if not obvious, shall be clearly explained.

(c) If prior domestic certificates are cited as a reason for denial, their numbers and dates and the names of the owners shall be stated. If prior foreign certificates or rights are cited, as a reason for denial, their nationality or country, numbers and dates, and the names of the owners shall be stated, and such other data shall be furnished, as may be necessary to enable the applicant to identify the cited certificates or rights.

(d) If printed publications are cited as a reason for denial, the author (if any), title, date, pages or plates, and places of publication, or place where a copy can be found shall be given.

(e) When a denial is based on facts known to the examiner, and upon request by the applicant, the denial shall be supported by the affidavit of the examiner. Such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

(f) Abandoned applications may not be cited as reasons for denial.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995]

## 7 CFR Ch. I (1–1–16 Edition)

### § 97.106 Reply by applicant; request for reconsideration.

(a) After an adverse action by the examiner, the applicant may respond to the denial and may request a reconsideration, with or without amendment of his or her application. Any amendment shall be responsive to the reason or reasons for denial specified by the examiner.

(b) To obtain a reconsideration, the applicant shall submit a request for reconsideration in writing and shall specifically point out the alleged errors in the examiner's action. The applicant shall respond to each reason cited by the examiner as the basis for the adverse action. A request for reconsideration of a denial based on a faulty form or procedure may be held in abeyance by the Commissioner until the question of the variety being new, distinct, uniform, and stable is settled.

(c) An applicant's request for a reconsideration must be a bona fide attempt to advance the case to final action. A general allegation by the applicant that certain language which he or she cites in the application or amendment thereto establishes the variety is new, distinct, uniform, and stable without specifically explaining how the language distinguishes the alleged new, distinct, uniform, and stable variety from the material cited by the examiner shall not be grounds for a reconsideration.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17190, Apr. 4, 1995]

### § 97.107 Reconsideration and final action.

If, upon reconsideration, the application is denied by the Commissioner, the applicant shall be notified by the Commissioner of the reason or reasons for denial in the same manner as after the first examination. Any such denial shall be final unless appealed by the applicant to the Secretary. If the denial is sustained by the Secretary on appeal, the denial shall be final subject to appeal to the courts, as provided in § 97.500.

[58 FR 42435, Aug. 9, 1993, as amended at 70 FR 28785, May 19, 2005]